

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

IN RE PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESALE PRICE LITIGATION

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ACTION ALLIANCE OF SENIOR CITIZENS OF)	
GREATER PHILADELPHIA, a non-profit)	MDL Docket No. 1456
Pennsylvania corporation, individually and on behalf of)	
all others similarly situated,)	Case No. 02C 0396
)	(N.D. Illinois)
Plaintiff,)	
)	Hon. Patti B. Saris
- against -)	
)	
FUJISAWA PHARMACEUTICAL CO., LTD.,)	
FUJISAWA USA, INC., FUJISAWA HEALTHCARE,)	
INC.,)	
)	
Defendants.)	
)	
-----	x	

01-17257 PBS

MOTION TO DISMISS

Defendant Fujisawa Pharmaceutical Co., Ltd. ("Fujisawa Pharmaceutical") was served by plaintiff Action Alliance of Senior Citizens of Greater Philadelphia ("Alliance") on April 22, 2002, pursuant to the applicable provisions of the Hague Convention. Fujisawa Pharmaceutical hereby moves this Court pursuant to Fed. R. Civ. P. 12(b)(6) to dismiss Alliance's Class Action Complaint (the "Complaint"). In support of the motion, Fujisawa Pharmaceutical states as follows:

1. Alliance brings this case as a purported class action alleging an antitrust violation under Section 2 of the Sherman Act.
2. The Complaint should be dismissed in its entirety pursuant to Rule 12(b)(6) because Alliance has not adequately pleaded (a) the existence of a relevant market, (b) that

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Fujisawa Pharmaceutical has a monopoly power in that relevant market, or (c) an antitrust injury -- all of which are essential elements of a cause of action under Section 2 of the Sherman Act. In addition, the Complaint should be dismissed because Alliance lacks standing.

3. As grounds for this motion, defendant Fujisawa Pharmaceutical relies upon the attached memoranda of law (Exhibit A) submitted by defendants Fujisawa Healthcare, Inc. and Fujisawa USA, Inc. in support of their earlier-filed motion to dismiss the Complaint as against them. The arguments set forth therein apply equally to defendant Fujisawa Pharmaceutical, and the Complaint should therefore be dismissed as against it as well.

WHEREFORE defendant Fujisawa Pharmaceutical respectfully requests that the Court dismiss the Complaint of plaintiff Alliance with prejudice.

RULE 7.1(A)(2) CERTIFICATION

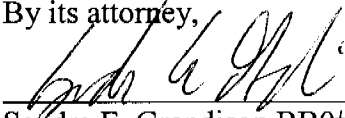
In accordance with L.R. 7.1(A)(2), counsel for defendant Fujisawa Pharmaceutical, Sandra E. Grandison, certifies that she conferred with counsel for the plaintiff in good faith to resolve or narrow the issues presented by this motion.

REQUEST FOR ORAL ARGUMENT

In accordance with L.R. 7.1(D), defendant Fujisawa Pharmaceutical requests oral argument on this motion.

FUJISAWA PHARMACEUTICAL CO.,
LTD.

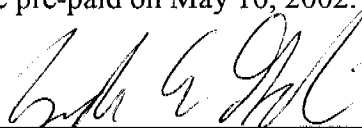
By its attorney,


Sandra E. Grandison BB0# 643763
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Dated: May 10, 2002

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorneys of record for each other party as listed below by U.S. Mail postage pre-paid on May 10, 2002.


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